

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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In re:	:	Chapter 7
	:	
Fitzpatrick Container Co.,	:	
	:	Case No. 20-14139 (PMM)
Debtor.	:	
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**TRUSTEE’S MOTION TO EXTEND TIME TO FILE
STATEMENTS AND SCHEDULES**

Lynn E. Feldman (the “Trustee”), the court-appointed chapter 7 Trustee for the estate of the above-captioned chapter 7 debtor, Fitzpatrick Container Co. (the “Debtor”), by and through her undersigned counsel, hereby moves this Court (the “Fourth Extension Motion”) for entry of an order, in substantially the form attached hereto as **Exhibit A**, extending the time for the Trustee to file the schedules of assets and liabilities, statement of financial affairs, and related documents (collectively, the “Statements and Schedules”). In support of the Motion, the Trustee respectfully states as follows:

JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the Eastern District of Pennsylvania (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.
2. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).
3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
4. The statutory bases for the relief requested herein are section 521 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 1007(c) and 9006(b) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 9014-2 of the Local Bankruptcy Rules of the United States Bankruptcy Court for the Eastern District of Pennsylvania (the “Local Rules”).

FACTUAL AND PROCEDURAL BACKGROUND

I. The Prior Extension Motions

5. On October 19, 2020 (the “Petition Date”), an involuntary petition [D.I. 1] (the “Petition”) was filed against the Debtor by: (a) GP Corrugated, LLC; (b) Kampack, Inc.; (c) WestRock CP, LLC; and (d) WestRock Southern Container, LLC (collectively, the “Petitioners”) seeking relief under chapter 7 of the Bankruptcy Code.

6. On December 23, 2020, the Court entered its *Order for Relief* [D.I. 11] (the “Order for Relief”).

7. On December 28, 2020, the Court appointed the Trustee as the chapter 7 Trustee for the Debtor and its estate [D.I. 13].

8. On December 29, 2020, the Trustee filed her *Motion to Extend Time to File Statements and Schedules* [D.I. 14] (the “First Extension Motion”).

9. On December 30, 2020, this Court entered its *Order* [D.I. 15] granting the First Extension Motion, thereby extending the deadline for the Trustee to file all required Statements and Schedules to March 29, 2021. (*See* D.I. 15, ¶ 1).

10. On March 12, 2021, the Trustee filed her *Motion to Extend Time to File Statements and Schedules* [D.I. 28] (the “Second Extension Motion”).

11. On April 13, 2021, this Court entered its *Order Granting Motion to Extend Time to File Statements and Schedules* [D.I. 31] (the “Second Extension Order”) granting the Second Extension Motion and extending the deadline for the Trustee to file all required Statements and Schedules to July 27, 2021. (Second Extension Order, ¶¶ 1-2).

12. On July 27, 2021, the Trustee filed her *Motion to Extend Time to File Statements and Schedules* [D.I. 34] (the “Third Extension Motion,” and collectively with the First Extension Motion and the Second Extension Motion, the “Prior Extension Motions”).

13. On July 27, 2021, the Court entered its *Order Granting Motion to Extend Time to File Statements and Schedules* [D.I. 37] (the “Third Extension Order”) granting the Third Extension Motion and extending the deadline for the Trustee to file all required Statements and Schedules to November 24, 2021. (Third Extension Order, ¶¶ 1-2).

II. Petitioners’ Rule 2004 Motion

14. On September 24, 2021, the Petitioners filed their *Motion for an Order Authorizing Examination and Production of Documents from Thomas J. Shallow, Jr. Pursuant to Bankruptcy Rule 2004 and Local Rule 2004-1* [D.I. 41] (the “Rule 2004 Motion”) seeking the Court’s authority to issue subpoenas and obtain discovery from the Debtor’s principal, Thomas J. Shallow, Jr. (“Shallow”).

15. On October 8, 2021, the Trustee filed her *Joinder of Lynn E. Feldman, Chapter 7 Trustee for the Estate of Fitzpatrick Container Co., to the Petitioning Creditors’ Motion for an Order Authorizing Examination and Production of Documents from Thomas J. Shallow, Jr. Pursuant to Bankruptcy Rule 2004 and Local Rule 2004-1* [D.I. 43] (the “Joinder”) joining the Rule 2004 Motion on the grounds that the information which will be revealed through the discovery and examination of Shallow will also be relevant to the administration of the Debtor’s estate. (Joinder, ¶ 5).

16. No party timely responded to the Rule 2004 Motion. (See D.I. 45).

17. On October 26, 2021, the Court entered its *Order Authorizing the Examination of and Production of Documents from Thomas J. Shallow, Jr. Pursuant to Bankruptcy Rule 2004* [D.I. 47] (the “Rule 2004 Order”) granting the Rule 2004 Motion and authorizing the Petitioners to issue subpoenas and obtain discovery from Shallow.

III. The Fourth Extension Motion

18. Pursuant to the Third Extension Order, the Trustee was required to file the Statements and Schedules by November 24, 2021.

19. Notwithstanding the Trustee's continued diligence, as of the date of the filing of this Fourth Extension Motion, the Trustee has been unable to obtain the Debtor's books and records.

20. As such, the Trustee is unable to complete and file the Statements and Schedules by November 24, 2021, making it necessary for the Trustee to file this Fourth Extension Motion.

RELIEF REQUESTED

21. In light of the foregoing, the Trustee seeks entry of an order pursuant to Bankruptcy Rules 1007(c) and 9006(b) extending the time to file the Statements and Schedules for an additional 120 days from the date on which the Statements and Schedules are currently due to allow sufficient time to locate the Debtor's books and records, conduct examinations in accordance with Bankruptcy Rule 2004, and complete the Statements and Schedules with the help of her court-appointed professionals.

BASIS FOR RELIEF

22. Pursuant to section 521 of the Bankruptcy Code and Bankruptcy Rule 1007(c), the Trustee would ordinarily be required to file the Schedules and Statements within fourteen days after the Order for Relief.

23. Bankruptcy Rule 1007(c) and Local Rule 9014-2(a)(3) permit the Court, upon motion and without a hearing, to grant an extension of time for the Trustee to file the Statements and Schedules "for cause shown." *See* Fed. R. Bankr. P. 1007(c). "Cause shown" is a liberal standard investing the bankruptcy judge with considerable flexibility. *Bryant v. Smith*, 165 B.R. 176, 181 (W.D. Va. 1994).

24. In *Bryant*, the district court compared the “cause shown” standard under Bankruptcy Rule 1007 to the standard for obtaining an extension of time under Federal Rule of Civil Procedure 6(b)(1), holding that Bankruptcy Rule 1007(c) requires the movant seeking an enlargement of time to simply “demonstrate some justification for the issuance of the order.” *See id.* at 182 (“An application for an extension of time under F.R.C.P 6(b)(1) ‘normally will be granted in the absence of bad faith or prejudice to the adverse party.’ . . . The same is true under Bankruptcy Rule 1007.”).

25. Here, the Trustee is aware of her obligation to file the Statements and Schedules by November 24, 2021 pursuant to this Court’s Third Extension Order.

26. However, the same factors that have previously prevented the Trustee from timely filing the Statements and Schedules continue to frustrate her good faith efforts to do so. Namely, to the best of the Trustee’s knowledge, the Debtor in this case is still not represented, has no physical location, and has not done business in well over a year. Shallow resides out of state and remains extremely difficult to locate and contact.

27. While the Trustee has exercised all possible diligence in attempting to comply with this Court’s Third Extension Order, the foregoing factors, among others, have prevented the Trustee from obtaining the Debtor’s books and records as of the date of the filing of the Fourth Extension Motion. Consequently, the Trustee is currently unable to complete the Statements and Schedules by November 24, 2021.

28. Accordingly, the Trustee believes that cause exists to allow the Trustee the additional time requested by this motion to locate the Debtor’s books and records and, with the assistance of the Trustee’s professionals, complete and file the Statements and Schedules.

29. Additionally, since the Court entered its Rule 2004 Order, the Trustee has continued working with counsel for the Petitioners to obtain the financial information necessary to prepare the Statements and Schedules.

30. Petitioners, through their counsel, have issued requests for production of documents to the Debtor's principal and certain of its professionals, and have further advised such parties of Petitioners' intent to conduct examinations under Bankruptcy Rule 2004 and Local Rule 2004-1 in accordance with the Rule 2004 Order.

31. As asserted in the Joinder, the Trustee believes that the information gleaned from Petitioners' requests for production and Rule 2004 examination will assist in the administration of the Debtor's estate, including preparing the Statements and Schedules.

32. The Trustee believes, and therefore avers, that the extension of time requested to file the Statements and Schedules will not cause any prejudice to any creditor or other interested party. Accordingly, the Trustee is requesting an extension of the filing deadline to **March 24, 2022** to file the Statements and Schedules.

NOTICE

33. The Trustee has provided notice of this Motion to: (a) the United States Trustee for the Eastern District of Pennsylvania; (b) the Debtor; (c) the Petitioners; and (d) all parties who have requested notice in this Chapter 7 case pursuant to Bankruptcy Rule 2002. In light of the relief requested, the Trustee respectfully submits that no further notice is necessary.

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WHEREFORE, the Trustee respectfully requests that this Court enter an order substantially in the form attached hereto as **Exhibit A**: (i) granting the Fourth Extension Motion and extending the time for the Trustee to file the Statements and Schedules for an additional 120 days, from November 24, 2021 to March 24, 2022; and (ii) granting such other and further relief as this Court deems just and equitable.

Dated: November 24, 2021

Respectfully submitted,

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/s/ Lawrence J. Kotler, Esq. _____

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Chapter 7 Trustee for the Debtor's Estate

**IN THE UNITED STATES BANKRUPTCY COURT
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In re:	:	Chapter 7
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	:	Case No. 20-14139 (PMM)
Debtor.	:	
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**ORDER GRANTING MOTION TO
EXTEND TIME TO FILE STATEMENTS AND SCHEDULES**

Upon consideration of the *Motion to Extend Time to File Statements and Schedules* (the “Motion”) filed by Lynn E. Feldman (the “Trustee”), chapter 7 Trustee in the above-captioned chapter 7 case, it is hereby:

1. **ORDERED** that the Motion is granted; and it is further
2. **ORDERED** that the Trustee shall file all required Statements and Schedules on or before March 24, 2022.

Dated: _____, 2021

The Honorable Patricia M. Mayer
United States Bankruptcy Judge

CC:

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